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## Comment Set 37

April 13, 2006

Ms. Valerie Van Way  
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California State Lands Commission  
100 Howe Avenue, Suite 100-South  
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Re: Chevron's Comments on the Draft EIR for Renewal of the Richmond Long Wharf Marine Terminal Lease - CSLR EIR No. 688  
State Clearinghouse No. 98112080

Dear Ms. Van Way:

Thank you for the opportunity to comment on the Draft Environmental Impact Report ("DEIR") issued by the State Lands Commission ("SLC") pursuant to the California Environmental Quality Act ("CEQA"), for the renewal of the lease of State lands by Chevron U.S.A. Inc. ("Chevron") for the Richmond Long Wharf Marine Terminal. This letter contains Chevron's comments on the DEIR.

### Comment 1: Feasibility of alternatives

An alternative must be rejected if it is "infeasible," i.e., not capable of being accomplished in a successful manner in a reasonable period of time, taking into account economic, environmental, legal, social, technological, or other considerations. CEQA Guidelines §§15091(a)(3), 15364. Throughout the DEIR, the discussion of alternatives to renewal of the Long Wharf lease assumes that the alternatives identified (Full Throughput via Pipeline and Conceptual Consolidation Terminal) would be feasible. This is not the case, for the following reasons:

#### Comment 1.1 - Infeasibility of Full Throughput via Pipeline Alternative

The following factors contribute to the infeasibility of the Full Throughput via Pipeline Alternative. The DEIR should be revised to take these issues into account.

A. Pipeline shipments to the Richmond Refinery from other marine terminal and refineries would require product transfers from the upland facilities. This would increase the number of ships traveling on the Bay, since smaller ships would be required

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37-1.1

to transport the same amount of crude and product in the shallower draft north of the Richmond-San Rafael Bridge. Increased vessel traffic would increase air emissions, risk of oil spills and vessel accidents.

B. There are insufficient “Jones Act” vessels and barges on the West Coast to fulfill the product lift requirements that the Full Throughput via Pipeline Alternative would require. This lack of available tonnage would result in a net decrease of road fuels to the people of California. In general, there is an ongoing, long-term decrease in clean product tonnage nationwide, so it would not be feasible to merely charter clean tonnage from other areas. New tonnage would have to be built to meet the transportation needs generated by a Full Throughput via Pipeline Alternative.

C. Increased traffic would also increase the amount of tankage and associated air emissions from the upland terminals, as they would have to store product that is shipped in and out of the Richmond Refinery.

D. Increased traffic would also require additional pipeline use for transfer to upland terminals and the Richmond Refinery, with associated environmental and safety risks.

E. The existing Bay Area pipeline infrastructure is hydraulically limited with the present volume of pipeline transfers. Any additional movement is technically infeasible and would require additional pipeline infrastructure to be built, with associated right-of-way issues, takings of property via eminent domain, etc.

F. Product or crude shipped via pipeline must be segregated to prevent contamination, which presents an array of logistical problems to avoid delays in receipt of product and production schedules and creates more “trans-mix” (slopped-off interface material), resulting in higher fuel costs for the people of California.

G. The Richmond Refinery is the only producer of base oils (used as a raw material to produce lubricants) and one of the largest producers of finished lubricants on the West Coast. Our base oils are shipped to the U.S. Gulf Coast as well. No other Bay Area refinery has that capability. Lubricants cannot be shipped via pipeline, so the Refinery would lose that business opportunity and the West Coast market that supply of lubricants. This would result in disruption of delivery of those products not only to the people of California, but the people who buy those products in Texas, Louisiana, Mississippi and Florida.

H. Pipeline transport is typically far more expensive than marine transport, rendering this alternative economically infeasible.

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Comment 1.2 – Infeasibility of Consolidated Terminal Alternative

Additional information is available on the infeasibility of this alternative, since the suggestion of a Consolidated Terminal has been raised previously.

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A consolidated terminal would be an impediment to vessel traffic in the northern reaches of San Francisco Bay. It is an area of high velocity current that sweeps around Point San Pablo. The combination of high density traffic (ferry boats, tugboats and barges, recreational craft, and large ships) and the boiling tidal currents could create an additional precautionary area. Ships that transit at minimal speed in this area may be subject to radical “set and drift.” In addition, small boats that ignore Rule 9 of the Navigation Rules of the Road may cause allisions or collisions with large vessels. This is a real risk, not a hypothetical one; for example, in 2004, the ship *Pacific Highway* struck the Richmond-San Rafael (R-SR) Bridge when a sailboat blocked the channel of the west span. The U. S. Coast Guard and Vessel Traffic Services have laid out two Regulated Navigation Areas (RNA) for the Pinole Shoal Channel and the approaches to the Richmond Harbors (one RNA to the north of R-SR Bridge and one RNA south of the R-SR Bridge). There are strict guidelines for meeting, passing or overtaking any vessel that exceeds 1,600 gross tons. Additionally, due to shallow water south of the R-SR Bridge west span, it is difficult for more than one ship to navigate the San Francisco Bay North Ship Channel. Therefore, the proposal to construct a Consolidated Terminal would create a “choke” point or restricted area similar to that for the Avon Terminal in Martinez. That is, safe passage of a vessel is based upon height of tide, strength of tidal current, quality of visibility, and the potential queue of ships awaiting transit of the area.

Factors rendering the Consolidated Terminal infeasible include:

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A. The Conslidated Terminal would require not only an outsized new marine wharf capable of accommodating eight to ten ships at a time, but also a pumping facility, a tank field of at least 500 acres, and an extensive new network of large pipelines. The tank field would have to contain over 100 tanks to store and segregate crude and product from the various refineries. Multiple large pipelines would be needed for each refinery (approximately 20 in total), in order to manage segregation of crudes, products and lubricants. Siting and construction of such a large facility would be equivalent to creating a sixth refinery in the Bay Area. There no feasible location along the Bay shoreline that could accommodate such a facility. Even if a location with the physical capacity and water access did exist, as a practical matter it would be impossible to obtain necessary permits and approvals and to satisfy the affecting communities (certainly not “within a reasonable period of time” as stated in CEQA Guidelines § 15364). Moreover, obtaining right-of-way for such pipelines would be a major undertaking. Pipeline construction projects would either cut through existing communities, with severe environmental and social impacts, and/or follow highway alignments, disrupting already congested Bay Area traffic. The DEIR does recognize some of these issues as environmental impacts. However, the magnitude of the economic, environmental, legal, social and technological issues raised by this alternative is so great that it should be considered infeasible for CEQA purposes.

B. Requires extensive dredging by the U.S. Army Corps of Engineers and associated environmental impact and permitting concerns.

C. Arriving ships must transit R-SR Bridge (east span with vertical clearance 135 feet). Many ships would not have the sufficient air draft clearance to approach this

facility. This span has the lowest vertical clearance in San Francisco Bay for large commercial ships.

D. Departing ships must transit via the west span of the R-SR Bridge after discharging (the west span has vertical clearance 185 feet).

E. May require launch service to facility for linemen, marine surveyors, and workers. Likewise, a terminus in Richmond would be required to handle personnel launch.

F. Exposure to Red Rock, and possibly Invincible and Whiting Rocks.

G. Increased exposure to high velocity currents (up 6 or 7 knots during winter months).

H. No deep water anchorage for awaiting berth or emergency bailout.

I. Exposure to strong Nor' westerly trade winds in the summer (25 – 35 knots).

J. Exposure to strong Southerly weather or wind ( 50 – 60 knots ).

K. Arrival transit plan / ship's course requires a left turn in the middle of the R-SR Bridge east span.

L. Cable area north of R-SR Bridge would negate the usage of the ship's anchor for both routine and emergency deployment.

M. Terminal would cross the present track line of the Vallejo – San Francisco Ferry (Transbay Link) System.

N. Terminal construction would probably block or modify the transit plan / ship's course for vessels departing the Richmond Long Wharf via the R-SR Bridge east span for any up river destinations (terminals in Rodeo, Martinez, & Benicia).

O. Due to the "starboard-side-to" only docking, arrival windows would be restricted to approximately 12 hours per calendar day (on ebbing current).

P. Due to the "starboard-side-to" only docking, departure windows would be restricted to approximately 12 hours per calendar day (on weak flooding current).

Q. Capacity constraints, as it is unlikely that a single terminal could meet the total daily crude requirements for the five Bay Area refineries (1MM barrels per day).

R. Requires permitting and construction of an extensive pipeline network and shore tankage, and associated environmental impacts.

S. Potential to reduce market access and competitiveness of refined fuels in the Bay Area.

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T. Crude is not necessary fungible for the five Bay Area refineries since they have different process equipment and business strategies. In fact, there are different metallurgies in some processing equipment that might render some crudes impossible to process. Infeasible logistical concerns would be generated by scheduling incoming (crude and blend stocks) and outgoing (refined products) for five separate business entities.

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#### Comment 2: Feasibility of No Project Alternative

In addition, under the No Project Alternative, the DEIR assumes that crude and product transport would be shifted to other Bay Area marine oil terminals. However, without construction of substantial additional facilities, the other existing terminals do not have the capacity to make up for the elimination of the Long Wharf, given the size of Chevron's facility. Therefore, the DEIR should recognize that the No Project Alternative without such construction is infeasible, as well as not meeting the project objective of maintaining Richmond Refinery operations.

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#### Comment 3: Impacts of No Project Alternative

As noted above, under the No Project Alternative, the DEIR recognizes that crude and product transport would be shifted to other Bay area marine terminals. Such a shift would require expansion of facilities at those terminals. Yet, while impacts from decommissioning the Long Wharf are discussed, no construction impacts for expanded facilities at other terminals are recognized under the No Project Alternative. It is not sufficient to rely, as the DEIR appears to do (see, e.g., pp. 4.2-52, 4.3-140), on addressing impacts of a future crude or product transportation alternative in subsequent applications to SLC and other agencies.<sup>1</sup> CEQA requires that the No Project Alternative include actions that "would reasonably be expected to occur in the foreseeable future if the project were not approved." CEQA Guidelines § 15126.6(e)(2).<sup>2</sup> Some of the facilities that would have to be constructed would be located in environmentally sensitive shoreline sites, with impacts on water quality, biological resources, and other resource areas. Failure to take foreseeable expansion of other facilities into account results in an underestimate of impacts on water quality, biological resources, and other resource areas from the No Project Alternative. The DEIR must be revised to consider such impacts.

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#### Comment 4: Impacts of Project Alternatives

Similarly, for both project alternatives, the DEIR consistently underestimates the indirect, reasonably foreseeable environmental impacts that would result from diverting operations

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<sup>1</sup> The DEIR (p. 3-8) states that decommissioning, abandonment and/or deconstruction of the Long Wharf would also require separate CEQA review. However, for purposes of the DEIR, impacts of those activities are included in the assessment of those alternatives (see, e.g., discussion of air quality impacts from wharf demolition under the No Project alternative, p. 4.6-24). The same is true of impacts associated with construction of alternative crude and product transport facilities that would be reasonably foreseeable consequences under the No Project Alternative which the DEIR (id.) similarly asserts would be subject to separate CEQA review. However, there is no such discussion of construction of alternative facilities that would be needed under the No Project Alternative, for air quality or other resource areas.

<sup>2</sup> See also CEQA Guidelines § 15126.6(e)(3)(B) which states: "[W]here failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval. . . ."

elsewhere. The impacts of shifting operations under the Full Throughput via Pipeline and Conceptual Consolidation Terminal are discussed, but not the impacts of constructing new facilities. As under the No Project Alternative, some of these facilities would have to be located in environmentally sensitive shoreline sites, with impacts on water quality, biological resources, and other resource areas. The DEIR acknowledges that new facilities must be built under both alternatives (see, e.g., p. 3.9, stating that construction of “new pipelines and facilities would be required to equal the current daily receipt of crude processed through the Refinery” and p. 3-10, calling for a new consolidated terminal and land-based pipeline system to link the terminal to area refineries). As noted in the previous comment, it is improper to ignore impacts associated with construction of such facilities and defer all consideration to subsequent CEQA review.

In fact, the DEIR (pp. 4.6-25 – 28, 4.7-16 - 18) does analyze in some detail construction air and noise impacts associated with the alternatives. Yet not even those impacts actually discussed in the DEIR are recognized in the summary comparison of impacts of the project and alternatives (DEIR, Table ES-2) or reflected in the discussion of the environmentally superior alternative (DEIR, pp. ES-6 – 8). By contrast, the biological resources section of the DEIR (pp. 4.3-142 and 143) contains only a very cursory and unsupported statement that, for new pipeline routes constructed under the two alternatives: “If sensitive biological resources are present along the new routes, the impacts of construction could be significant (Class I and II).” Yet even that single, brief and vague sentence is not incorporated in the summary comparison in Table ES-2 or the environmentally superior alternative discussion (DEIR, pp. ES-6 – 8). More important, there is no mention of the much larger construction impacts on biological resources associated with building the Consolidation Terminal itself, and the analysis of other relevant resource areas (e.g., water quality) does not contain even a limited and conclusory acknowledgment of construction impacts. Construction impacts on all resource areas, as well as the unidentified impacts on biological resources alluded to in this cursory statement, must be described and fully taken into account in the analysis of alternatives, including the determination of the environmentally superior alternative (see next comment).

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#### Comment 5: Environmentally Superior Alternative

Chevron agrees that the Proposed Project is environmentally superior to the Conceptual Consolidation Terminal alternative. However, for the reasons stated in the previous two comments, Chevron disagrees that the No Project Alternative would be environmentally superior and that the Full Throughput via Pipeline is the environmentally superior project alternative. The DEIR should acknowledge the impacts associated with the construction of expanded facilities under the No Project Alternative or construction of a new pipeline from another terminal to the refinery. This includes both impacts buried in the DEIR text but disregarded in determining the environmentally superior alternative (e.g., air quality and noise impacts, see previous comment and compare Tables ES-2 and DEIR pp. ES-6-8) and those that are not even recognized anywhere in the DEIR (e.g., construction impacts to water quality). By contrast, renewal of the Long Wharf lease requires no construction of any new facilities. Moreover, as discussed in the DEIR, mitigation measures for the Proposed Project would reduce many of its operational impacts to insignificance, while the significant and unavoidable impacts would simply be shifted to new locations under the alternatives. Taking all these factors into account, Chevron believes that the Proposed Project, which relies on facilities already in place, is the environmentally superior alternative.

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## Comment 6: Approach to Mitigation

In general, Chevron is concerned by the approach to mitigation taken in the DEIR. In many instances, the DEIR recites regulatory requirements under the jurisdiction of other agencies as well as SLC's own Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS"). In particular, marine oil terminals are subject to a comprehensive Oil Spill Response Plan that is administered by the U.S. Coast Guard, U.S. Environmental Protection Agency ("EPA") and the California Department of Fish & Game ("CDFG") Office of Oil Spill Prevention and Response ("OSPR"). These regulations are applicable to all marine oil terminals operating in California and have resulted in a standardization of industry practices. As a result, there are thoroughly tested spill response procedures in place in the Bay Area managed by the Coast Guard, EPA and OSPR. In addition, dredging is managed under the Long Term Management Strategy by the Dredge Material Management Office ("DMMO"), in which SLC is a participant. Any variation to these procedures should only be effectuated in consultation with all agencies involved and after the marine oil terminal industry and other stakeholders have had a collective opportunity to comment.

However, rather than relying on such established requirements, the DEIR proposes as mitigation measures a variety of alternative, overlapping requirements that encroach on (and are potentially inconsistent with) the directives and authority of other regulatory regimes. This approach is not only redundant and unnecessary, but also poses a compliance problem for Chevron, which remains legally obligated to comply with all applicable regulations even where they may conflict with the DEIR's mitigation measures. Moreover, imposing the substantial costs of additional unnecessary mitigation places Chevron at a competitive disadvantage compared to other terminal operators not subject to these requirements. Chevron believes that the SLC should not use lease renewal to impose mitigation measures which effectively rewrite applicable standards and regulations and result in inconsistent directives to operators. Such "regulation by lease" imposes inequitable burdens and costs on a few entities, without full and fair opportunity to participate in a public rulemaking process. Marine oil terminals should not be subject to different operating standards depending upon whether or not the terminal has recently undergone the SLC lease renewal process.

Where the DEIR identifies an issue that is already addressed by existing regulatory requirements that are sufficient to avoid a significant impact, such requirements should be acknowledged and relied on. In such cases, no potentially significant impact exists and there is no basis under CEQA to impose any mitigation measures in the first place.<sup>3</sup> Alternatively, if SLC insists on including mitigation measures, such measures could (albeit redundantly) require Chevron to comply with the corresponding regulatory requirements – but should not contain additional superfluous and/or potentially conflicting provisions. Specific examples are addressed in our comments below.

<sup>3</sup> A lead agency must adopt feasible mitigation measures that will substantially lessen or avoid impacts. CEQA §§ 21002, 21081(a); CEQA Guidelines §§15002(a)(3), 15021(a)(2), and 15091(a). However, mitigation measures must address only the impacts caused by a project. CEQA Guidelines §15126.4. There must be an "essential nexus" or connection between the mitigation measure and a legitimate governmental interest. Nollan v. California Coastal Commission, 483 U.S. 825 (1987). The mitigation measure also must be "roughly proportional" to the impacts of the project. Dolan v. City of Tigard, 512 U.S. 374 (1994).

Comment 7: Mitigation Measure (“MM”) OS-3(a)

Consistent with MOTEMS, the Long Wharf is already equipped with existing devices that allow for quick release of lines in the event of emergency. For the reasons stated in comment 6, Chevron asks SLC either to eliminate MM OS-3(a) as redundant with MOTEMS requirements, or to clarify (either by revising the MM or in its response to this comment) that MM OS-3(a) will be satisfied by compliance with MOTEMS requirements. We understand that SLC may believe that other applicable regulations require technological improvements beyond the requirements of MOTEMS. Chevron will, of course, comply with all applicable regulatory requirements. If that is the case, SLC should state what those requirements are and clarify that MM OS-3(a) will be satisfied by compliance with them. However, in the absence of properly promulgated regulatory requirements, we do not believe that quick release devices beyond those already present are necessary or appropriate. In particular, Chevron is concerned that additional remote-operated quick release devices may be unsafe or may increase the risk of oil spills, which the mitigation is supposed to reduce. Releasing a ship must be done deliberately and carefully, ensuring that transfers have ceased, lines are drained, the ship is prepared, tugs are present and other conditions are safe.

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Comment 8: MM OS-3(b)

Tensions-monitoring devices are redundant and unnecessary. Chevron’s existing practices are sufficient to prevent and respond to incidents. Existing preventative practices include the following:

- Chevron has highly trained and qualified operators present at every berth whenever a ship is present at the berth. These are highly trained and experienced employees who are present during every transaction. They are well trained to respond to an incident, and have complete authority to terminate product transfers without further authorization, if they determine that mooring lines become slack and present a concern.
- Chevron has existing alarms in place to detect ship movements. These devices are tested as part of Chevron’s preventative maintenance program on an annual basis.
- Many ships already have tension meters (for example, the *Sirius Voyager* and *Cygnus Voyager*), making wharf tension meters a redundancy. More ships will be fitted with tension meters in the future.

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In addition, Chevron believes this MM may not be technically feasible at the Long Wharf, given the difficulties of maintenance and reliability with the electronics and mechanical aspects for these devices in a harsh marine environment (fog, salt, wind etc). These conditions differ from those at the few other Bay Area marine terminals that have these devices. It is also important to note that the risk is less at the Richmond Long Wharf than at other facilities where SLC has requested such devices, since the Long Wharf is located in a more benign environment where current velocities are much slower and milder than at upland marine terminals.

The mitigation measure singles out Berth 1 at Long Wharf, but the two past incidents at that berth would not have been prevented had such devices been in place. These devices are new and

untested technology and there is no evidence that they are effective in reducing the risk of an oil spill. There is no basis to find that spills result from the damage caused by excess strain on mooring lines, or that this measure would in any way reduce the probability of an oil spill or increase the applicant's response capability. Thus, this measure is not effective to substantially lessen or avoid the stated impact. Regarding other berths, installation of devices should not be triggered automatically as provided in the MM. If a ship were to drift more than seven feet while moored, an incident investigation would be conducted, which may determine that other corrective action is more appropriate. For the reasons stated in this comment and in comment 6, Chevron requests that this MM be deleted. At most, the mitigation could require Chevron to determine, in the event of a future incident, whether installation of tension-monitoring devices would be necessary and effective.

37-8

Comment 9: MM OS-3(c)

This measure requires the applicant to install an Allision Avoidance System (AAS) at the terminal to prevent damage to the pier or vessel during docking operations. Chevron's existing practices are sufficient to reduce the risk of incidents. The DEIR does not explain how an AAS can effectively lower the probability of an oil spill or increase response capability for spills. While collision with the dock could cause upper ship or dock damage, such damage is unrelated to the risk of spills. The Long Wharf design prevents damage to oil handling equipment from such incidents, so there is no danger of a spill if a collision occurs. If a ship did run into the side of the wharf, it could damage the wooden dock but there is equipment or piping present that the ship could hit. (This configuration is different than at some other marine terminals, where pipes and loading arms are exposed and could be damaged in the event of ship collision.) Rather than addressing a genuine safety concern, this MM actually creates a hazard: the AAS distracts bar pilots from managing their principal task of ensuring the safe moorage of the vessel. San Francisco bar pilots have told Chevron that they prefer not to have the AAS, their utilization of these meters at other terminals that have them is low, and that at close proximity to a dock, the pilot's eye is on the foremast and ship's hull (parallel body) to give feedback on forward and transverse speeds. Moreover, these devices often cannot be seen half the time, since the vessel blocks those tugs that are on the Bay side of the wharf. For the reasons stated in this comment and in comment 6, Chevron requests that this MM be deleted.

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Comment 10: MM OS-3(d)

Chevron already has a comprehensive, state of the art preventive maintenance program which is sufficient to reduce the risk of incidents to an insignificant level. Portions of our preventative maintenance program are required by regulations, and some provisions are conducted over and above minimum requirements. In particular, Chevron's preventive maintenance practices are consistent with the specific preventive maintenance requirements of MOTEMS. Accordingly, it is unnecessary and redundant for Chevron to develop and submit an additional maintenance program for SLC approval, and SLC should not impose potentially inconsistent requirements via the lease renewal. While Chevron does not object to provide its maintenance program to SLC for informational purposes, it is inappropriate for SLC to use the lease as a means of establishing approval authority for discretionary portions of our program, voluntarily incorporated by Chevron in excess of applicable requirements. The MM actually creates a disincentive for Chevron and other terminal operators to adopt programs that go beyond strict regulatory

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compliance, at the risk of subjecting themselves to additional regulation and competitive disadvantage. For the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM OS-3(d) as redundant with MOTEMS requirements, or to clarify (either by revising the MM or in its response to this comment) that MM OS-3(d) will be satisfied by compliance with MOTEMS requirements.

**37-10**

Comment 11: MM OS-4

There is little information available about responding to spills of heavy Group V oils. It is unclear whether a significant problem exists that is not adequately addressed by existing response methods. Chevron is willing to participate in industry-wide effort regarding Group V oil spill response technology. However, SLC should not subject Chevron to unique requirements and costs via the lease renewal. Chevron requests that this MM be revised to state that “Chevron shall participate with other terminal operators and stakeholders in a study of Group V oil spill response technology, including potential new response equipment and techniques that may be applicable for use at the Long Wharf, if such a study is conducted by California State Lands Commission during the life of the lease.”

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Comment 12: MM OS-5

This MM calls for implementation of MM OS-3d. Please see comment 10 regarding the latter measure.

**37-12**

Comment 13: MM OS-6a

This MM calls for implementation of MM OS-3a. Please see comment 7 regarding the latter measure.

**37-13**

Comment 14: MM OS-6b

Chevron is responsible for developing an emergency fire plan as required by MOTEMS and will comply with that requirement. It is unnecessary to include an overlapping set of procedures in this mitigation measure. For the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM OS-6(b) as redundant with MOTEMS requirements, or to clarify (either by revising the MM or in its response to this comment) that MM OS-6(b) will be satisfied by compliance with MOTEMS requirements.

**37-14**

Comment 15: MM OS-7a

Like MM OS-4, this measure requires Chevron to participate in a study that should be undertaken on an industry-wide basis, including vessel operators. The Richmond Refinery does not own or operate vessels and should not be made responsible for improvement of the Vessel Tracking System (“VTS”) which tracks movements of all ships in the Bay. In addition, any such study should be conducted by the U.S. Coast Guard, since monitoring and modification of the VTS is under Coast Guard jurisdiction and not under the control of other agencies. Chevron requests that this MM be revised to state that “Chevron shall participate with other terminal and vessel operators and stakeholders in an analysis to determine the adequacy of the existing VTS in

**37-15**

the Bay Area, if such a study is conducted by the U.S. Coast Guard during the life of the lease and the Coast Guard requests that Chevron participate.”

37-15

Comment 16: MM OS-7b

This mitigation measure requires Chevron to “respond [to] any spill as if it were its own, without assuming liability, until such time as the vessel’s response organization can take over. . . .” While the scope of this requirement is unclear, the discussion in the DEIR (pp. 4.1-46 – 48) of spills “near the Long Wharf” does not distinguish between spills from vessels berthing at or traveling to or from the Wharf, and spills from other vessels unrelated to the Wharf. To the extent that this MM applies to spills from unrelated vessels that happen to be operating “near the Long Wharf,” it has no relationship to any potential impact of the lease renewal and cannot be imposed as mitigation under CEQA. Accordingly, Chevron requests that this MM be revised to limit its scope to spills from vessels berthing at or traveling to or from the Wharf.

37-16

More generally, the requirement to provide an initial spill response may be dangerous to response personnel, based on our protocols (contained in Chevron’s Oil Spill Response Plan on file with OSPR and U.S. Coast Guard (“USCG”) requiring an initial safety assessment (including material identification) prior to responding to a spill in accordance with 29 C.F.R. 1910.120. Moreover, spill response is subject to directives issued by the USCG and OSPR. Additional requirements are unnecessary and could conflict with appropriate response as directed by those agencies with jurisdiction. For the reasons stated in comment 6, Chevron asks SLC either to eliminate MM OS-7(b) as redundant with OSPR and USCG requirements, or to clarify (either by revising the MM or in its response to this comment) that MM OS-7(b) will be satisfied by compliance with OSPR and USCG requirements.

Comment 19: MM WQ-2

This measure requires Chevron to provide information to agents for “vessels that have called at the Long Wharf as of the date of adoption of the cited Mitigation Monitoring Program” and “that would be likely to call at the Long Wharf in the future” regarding statutory requirements applicable to ballast water discharges. Chevron has no authority over such vessels or discharges and believes it is inappropriate for SLC to impose its own statutory enforcement obligations on terminal operators. Nevertheless, for SLC’s convenience, Chevron is willing to take reasonable steps to provide such information to vessels when Chevron has actual notice that the vessels intend to dock at the Long Wharf. However, the measure as drafted is unacceptably vague and could be interpreted to require Chevron to seek out and inform contacts for an undefined universe of vessels, including those that may have visited the Wharf many years in the past but will never do so again, or vessels deemed “likely” to arrive (for some unspecified reason) that won’t actually do so for many years in the future, if ever. Moreover, if there is no reasonably foreseeable nexus between a particular vessel and the Long Wharf during the renewed lease term, there is no requirement for mitigation under CEQA. MM-WQ2 should be revised to state that: “Chevron will advise agents representing vessels that have informed Chevron of plans to call at the Long Wharf after the date of adoption of the cited Mitigation Monitoring Program about the California Marine Invasive Species Control Act.”

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Comment 20: MM WQ-7

This measure states that Chevron will provide information to vessels “that have called at the Long Wharf as of the date of adoption of the cited Mitigation Monitoring Program and vessel representatives that would be likely to call at the Long Wharf in the future” regarding requirements related to anti-fouling paint. As with MM WQ-2, the universe of vessels Chevron must seek out and inform is unacceptably vague, again imposing on a private party the burden of enforcing a regulatory scheme overseen by public agencies. Nevertheless, for SLC’s convenience, Chevron is willing to implement MM WQ-7 if it is revised to state that: “Chevron will advise agents representing vessels that have informed Chevron of plans to call at the Long Wharf after the date of adoption of the cited Mitigation Monitoring Program about the requirements of the 2008 International Maritime Organization (IMO) prohibition of TBT applications to vessel hulls.”

37-20

Comment 21: MM WQ-8

This MM calls for implementation of MM WQ-9. Please see comment 22 regarding the latter measure.

37-21

Comment 22: MM WQ-9

To mitigate this impact, the DEIR proposes Mitigation Measure WQ-3, which inserts SLC into the Storm Water Pollution Prevention Plan (“SWPPP”) preparation and review process, despite the fact that the Regional Water Quality Control Board (“RWQCB”) has authority over such plans. SWPPPs are governed by State Water Resources Control Board requirements and subject to approval by the RWQCB. It is inappropriate for the SLC to second-guess the judgment of these agencies and attempt to impose its own SWPPP. As for the Best Management Practices (BMPs) included in this MM, Chevron supports the development of BMPs for the Long Wharf, but the BMPs must be practical under the circumstances. For instance, washing all material into sumps is impractical as it will generate unnecessary amounts of hazardous waste and overwhelm the sumps so they are not available for necessary uses. Rather than washing down a 4,400 foot long wharf, Chevron’s current practice is to use sweeper trucks and hand cleaners to collect and dispose of debris and other material. We believe this existing practice is adequate to ensure that impacts are less than significant. For these reasons, MM WQ-9 should be modified to state that the elements included in the MM should not be considered mandatory minimum requirements, but suggested elements of BMPs will be developed in consultation with (rather than subject to approval by) SLC.

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Comment 23: MM WQ-11

This MM calls for implementation of MMs OS-3a through OS-3d and OS-4. Please see comments above regarding those measures.

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Comment 24: MM WQ-12

This MM calls for implementation of MMs OS-7a and OS-7b. Please see comments above regarding those measures.

37-24

Comment 25: MM BIO-3a - c

The dredging windows specified in these mitigation measures are inconsistent with the dredging established by the Dredged Material Management Office (“DMMO”) to protect the species cited. In particular, to avoid impacts on other species, DMMO encourages dredging in June and allows dredging in March, which are prohibited by MM Bio-3a and 3b.<sup>4</sup> Accordingly, the “Rationale for Mitigation” statement in the DEIS (p. 4.3-75) that the dredging windows in this mitigation measure are consistent with those established under the dredging Long Term Management Strategy (“LTMS”) is not correct. If consistency with the LTMS is indeed SLC’s rationale, the DEIR appears to have made an error and the mitigation measure should be revised to require such consistency.

Dredging in the Bay Area is effectively coordinated and managed by the DMMO process which includes consultation with many interested agencies including the U.S. Army Corps of Engineers, National Marine Fishery Service, California Dept. of Fish & Game, the Bay Conservation & Development Commission, the State Water Resources Control Board and, of course, the SLC itself. The DMMO addresses issues relating to the specifics and timing of dredging, including the protection of fish habitat. The separate imposition of additional requirements through this lease renewal appears to conflict with DMMO directives. Yet the discussion of this impact (DEIS pp. 4.3-71 - 75) contains no evidence that the DMMO’s dredging windows are inadequately protective. As a participant in the DMMO, if SLC believes that the DMMO’s dredging windows are inadequately protective, it should raise this concern within the DMMO process and help develop revised dredging windows applicable to all dredging operations, not just those at the Richmond Long Wharf. Moreover, Chevron does not have the option of disregarding the DMMO’s directives in order to comply with SLC’s mitigation measure. Accordingly, for the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM Bio-3a - c as redundant with DMMO requirements, or revise MM Bio-3a - c to state that Chevron must comply with DMMO requirements.

37-25

Comment 26: MM BIO-4

This MM calls for implementation of MMs WQ-2 and WQ-5. Please see comments above regarding those measures.

37-26

Comment 27: MM BIO-6a

This MM calls for implementation of MMs OS-3a through OS-3d and MM OS-4. Please see comments above regarding those measures.

37-27

Comment 28: MM BIO-6b

<sup>4</sup> In addition, the MM is internally inconsistent. MM Bio-3a prohibits dredging in June while MM Bio-3c requires that Chevron “shall schedule dredging in June through November.”

This measure requires Chevron to demonstrate to the satisfaction of the CSLC that Chevron can successfully implement its Oil Spill Response Plan and can deploy within 3 hours all of the boom necessary to simultaneously protect all the sensitive resources at risk of contact with oil within 3 hours of a spill at Long Wharf. This measure infringes upon the jurisdiction of the U.S. Coast Guard and the Office of Oil Spill Prevention & Response (“OSPR”) to effectuate a comprehensive and consistent scheme for oil spill response by all marine oil terminal operators. Chevron conducts required drills on a regular basis with US Coast Guard and Department of Fish and Game as required by OPA 90 and SB 2040, and has demonstrated its ability to successfully implement its response plan to the satisfaction of those agencies with jurisdiction. Chevron has sufficient equipment and resources in place to conduct an adequate initial response until other resources (MSRC, US Coast Guard and DFG) arrive to assist in responding to an incident. Our contractor, Marine Spill Response Corporation (MSRC) has a proven quick response time. Within 1 ½ mile of the Long Wharf MSRC has 30,000 feet of boom in the Richmond Inner Harbor. MSRC also has 200,000 feet of boom strategically located on the Bay, all of which is at Chevron’s disposal and within 8 hours of the Long Wharf. Thus, Chevron already has available far more than the 15,000 feet of boom referenced in the MM.

37-28

Moreover, this MM conflicts with and diverts resources needed to support the decisions of the Unified Command (which is the senior federal agency representative, the senior State agency representative, and the responsible party). The Unified Command has authority over the spill response based on the specific circumstances at the time of the incident. Predetermining the spill response time of 3 hours, as in this MM, could lead to unnecessary environmental damage in other areas. Chevron will deploy appropriate response equipment to sensitive sites within 3 hours of an oil spill when so directed by a lead regulatory agency or when so indicated in the Geographic Response Plan annex to the Area Contingency Plan. Accordingly, for the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM BIO-6b as redundant with OSPR and MSRC requirements, or to clarify (either by revising the MM or in its response to this comment) that MM BIO-6b will be satisfied by compliance with OSPR and MSRC requirements.

Comment 29: MM BIO-6c

This measure requires Chevron to develop procedures to flush double-crested cormorants in the event of a spill. In the event of an oil spill, OSPR provides directives regarding the necessity, timing and manner of sonic hazing or other methods of flushing birds. It is inappropriate and against CDFG regulations for Chevron to take direct action toward wildlife in the event of an oil spill. As part of our approved spill response plan we have contracted with and would employ a qualified wildlife entity, the Oiled Wildlife Care Network, to respond to wildlife concerns. For the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM BIO-6c as redundant with OSPR requirements, or to clarify (either by revising the MM or in its response to this comment) that MM BIO-6c will be satisfied by compliance with OSPR requirements.

37-29

Comment 30: MM BIO-6d

Chevron already has in place a strategy to ensure that equipment and personnel are available to protect the referenced sensitive sites. Our contractor MSRC has a proven quick response time. Within 1 ½ mile of the Long Wharf, MSRC has 30,000 feet of boom available in the Richmond Harbor. MSRP also has 200,000 feet of boom strategically located on the Bay, all of which is at Chevron's disposal and within 8 hours of the Long Wharf. As noted in comment 28, Chevron has demonstrated deployment and placement of booms for habitat protection to the satisfaction of agencies with jurisdiction. Accordingly, for the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM BIO-6d as redundant with OSPR and MSRC requirements, or to clarify (either by revising the MM or in its response to this comment) that MM BIO-6d will be satisfied by compliance with OSPR and MSRC requirements.

**37-30**

Comment 31: MM BIO-6e:

This measure requires Chevron to document the loss of resources occurring from a large spill. The Natural Resource Damage Assessment ("NRDA") procedures are included in the Area Contingency Plan managed by the Coast Guard and EPA. Developing sampling methods prior to an oil spill does not expedite cleanup because each spill is unique as to quantity, commodity, impacted area and remediation strategies. Accordingly, for the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM BIO-6e as redundant with Area Contingency Plan NRDA requirements, or to clarify (either by revising the MM or in its response to this comment) that MM BIO-6e will be satisfied by compliance with Area Contingency Plan NRDA requirements.

**37-31**

Comment 32: MM BIO-6g

This MM calls for implementation of MMs OS-7a and OS-7b. Please see comments above regarding those measures.

**37-32**

Comment 33: MM FSH-1

This MM requires Chevron to participate in the development of California Department of Fish and Game ("CDFG") regulations on herring commercial fishing and to comply with regulations that CDFG may develop in the future in order to avoid interference with fishing activities. Chevron will, of course, comply with any applicable regulations that are promulgated in the future. However, Chevron does not engage in commercial fishing and will be notified by CDFG of any applicable new requirements. Moreover, Chevron's participation in a process of developing hypothetical new regulations on fishing activities would do nothing to reduce or avoid any environmental impact and cannot be required as mitigation under CEQA. The requisite nexus between the mitigation and the impact it purports to address is entirely lacking in this case. Accordingly, for the reasons stated in this comment and in comment 6, Chevron asks SLC either to eliminate MM FSH-1 as redundant with the future CDFG requirements, or revise MM FSH-1 to state that Chevron must comply with any applicable requirements that CDFG may promulgate.

**37-33**

Comment 34: MM FSH-2

This MM ignores the fact that the VTS system operated by the Coast Guard is available to provide navigational information to all fishing vessels transiting and operating in the Bay. There is no need for Chevron to separately notify the CDFG Herring Advisory Committee, nor have CDFG, the Committee, or the fishing vessel operators requested that Chevron do so. On the contrary, it is not reasonable or feasible to require a marine terminal operator to identify and contact the operators of fishing vessels. In order to decrease the possibility of miscommunication and confusion among vessels, there needs to be one point of contact regarding vessel traffic, i.e. the Coast Guard VTS system. Chevron asks SLC either to eliminate MM FSH-2 as redundant with the VTS, or to clarify that the “other means” of notification referred to in the MM may include the VTS.

37-34

This MM also calls for implementation of MM FSH-1. Please see comment above regarding the latter measure.

Comment 35: MM FSH-6a

This MM calls for implementation of MMs WQ-2 and WQ-5. Please see comments above regarding those measures.

37-35

Comment 36: MM FSH-6b

This measure requires Chevron to participate in implementing the Delta Smelt Action Plan, an action that should be undertaken on an industry-wide basis, including vessel operators. The Richmond Refinery does not own or operate vessels, has no authority over ballast water practices of vessels docking at the Long Wharf, and should not be made responsible for actions to address invasive species. Nevertheless, Chevron is willing to participate in an industry-wide effort and agrees with the language stating that the level of funding should be determined based on the proportionate responsibility of participants. Consistent with that language in MM FSH-6b, Chevron does not believe it is appropriate for program funding to be assessed against Chevron alone via the lease renewal, unless and until such assessments are made against marine terminal and vessel operators generally. Accordingly, Chevron requests that this MM be revised to state that “Chevron shall participate and assist in funding ongoing and future actions related to invasive species and identified in the October 2005 Delta Smelt Action Plan (State of California 2005), if the lead Action Plan agencies require such participation and funding from marine terminal and vessel operators during the life of the lease.”

37-36

Comment 37: MM FSH-8

This MM calls for implementation of MM BIO-3. Please see comment above regarding the latter measure.

37-37

Comment 38: MM FSH-9a

This MM calls for implementation of MMs OS-3 through OS-7, BIO-6b and BIO-6d. Please see comments above regarding those measures.

37-38

Comment 39: MM FSH-9b

The MM requires posting of notices at spill sites. In the event of an oil spill, OSPR provides directives regarding the necessity and location of notices. For the reasons stated in comment 6, Chevron asks SLC either to eliminate MM FSH-9b as redundant with OSPR requirements, or to clarify (either by revising the MM or in its response to this comment) that MM FSH-9b will be satisfied by compliance with OSPR requirements.

37-39

Comment 40: MM FSH-9c

This measure requires Chevron to compensate fishing and related business operators for losses from oil spills. Although socioeconomic effects (such as effects on businesses) may be considered in determining whether or not a physical impact on the environment is significant, loss of business income is not an “environmental impact” under CEQA. See CEQA Guidelines § 15131(a), (b). Mitigation is required only to address physical environmental impacts, not financial losses. Accordingly, this mitigation measure should be deleted. Chevron will, of course, provide compensation as required under applicable law, such as compensation under the California Oil Spill Prevention and Response Act, as stated in MM SOC-1. (See comment 49 below on MM SOC-1.)

37-40

Comment 41: MM-FSH-9d

Chevron agrees with the spirit but not the wording of this mitigation measure. In the event that Chevron is determined to be the responsible party for an oil spill, Chevron will voluntarily participate in post-spill evaluation of mitigation effectiveness. As provided in the MM, the terms and conditions of Chevron’s financial participation will be determined after the spill in consultation with relevant agencies. However, the statement that “Chevron shall contribute to independent public or private organizations for oil spill research” is unacceptably vague. We assume that this sentence is intended to refer to research related to evaluation of a spill at the Long Wharf (although, in that case, it appears to be redundant with the remainder of the MM text). If the intended meaning is for Chevron to contribute to unrelated research on oil spills generally, there would be no nexus to any impact of the Long Wharf and such contributions could not be required as mitigation under CEQA. Accordingly, Chevron asks that SLC clarify that the intended scope of research under this sentence is limited to the post-spill evaluation as described in the MM.

37-41

Comment 41: MM FSH-10

This MM calls for implementation of MMs OS-7, FSH-9b and FSH-9d. Please see comments above regarding those measures.

37-41

Comment 42: MM LU-3

This MM calls for implementation of unspecified MMs contained in the OS, WQ, BIO and FSH sections of the DEIR. Please see comments above regarding measures applicable to those resource areas.

37-42

Comment 43: MM LU-4

This MM calls for implementation of MMs OS-7a and OS-7b. Please see comments above regarding those measures.

37-43

Comment 44: MM N-1

As the DEIR concedes (p. 4.7-12), there is no data indicating that exceedances of applicable City noise standards have occurred. Chevron questions the DEIR's presumption, based solely on occasional resident complaints in the absence of data on actual noise levels, that the City's noise standards are being exceeded. Residents may as readily complain about noise at levels allowable under the City standards. Moreover, as the DEIR states (p. 4.7-13), vessel noise is not under Chevron's control, and local regulation of this noise source is in any case preempted.

Nevertheless, Chevron has been and will continue to be working with vessel operators to reduce or avoid noise issues, as stated in the "rationale for mitigation" (id.). In particular, Chevron already has in place procedures for investigating and responding to noise complaints. Chevron's existing and long standing practice to respond to community concerns by means of a dedicated and well publicized environmental hotline that is staffed 24 hours a day, 365 days a year. The community is encouraged to call this number regarding any issues related to the Refinery operation, including noise. If the caller wishes, a trained technical representative is dispatched to investigate the complaint. Chevron records these incidents and takes corrective action as appropriate. Chevron has a track record of success in resolving noise complaints, although the investigation often reveals that the noise comes from a source other than the Long Wharf. Over the past two years, our records indicate that fewer than 1 noise complaint per month can be attributed to the Long Wharf – an insignificant level of noise impacts. The majority of the noise complaints we receive are due to the monthly testing of the CAER or refinery community warning sirens, construction or traffic on the Richmond-San Rafael Bridge or fireworks.

37-44

Regarding the MM itself: depending on vessel requirements and other vessel traffic, it may not be safe or practical to relocate noisy ships as prescribed in the MM. Depending on the circumstances, this requirement could unduly interfere with safe and efficient offloading operations and prolong the residence time of the noisy ships. Moreover, the MM fails to recognize that moving a ship a few hundred yards may not solve the problem, while doing so (even if such relocation does benefit the complainants) could expose other receptors to additional noise. Accordingly, Chevron requests that this MM either be deleted as unnecessary (since fewer than 1 noise complaint per month is an insignificant impact not requiring mitigation) or be revised to provide that ships would be relocated only if it is safe and practical to do so without unduly interfering with terminal operations or exposing other residents to noise.

Comment 45: MM VR-2

This MM calls for implementation of unspecified MMs contained in the OS and BIO and sections of the DEIR. Please see comments above regarding measures applicable to those resource areas.

37-45

Comment 46: MM VR-3

This MM calls for implementation of MMs OS-7a and OS-7b. Please see comments above regarding those measures.

37-46

Comment 47: MM GEO-4

As noted in Comment 7, consistent with MOTEMS, the Long Wharf is already equipped with existing devices that allow for quick release of lines in the event of emergency such as a tsunami. However, the MM's unqualified requirement for quick release of a vessel after notification of a tsunami is counterproductive and, depending on the circumstances, could actually create a dangerous situation. The MM seems inappropriately focused on structural damage without regard to the safety of vessel crew and terminal workers. In some cases, it would be safer for the vessel to remain secured to the dock. To ensure safety of personnel as well as vessels and terminal facilities, the vessel operators must be free to make case-by-case decisions that, in any case, are under the jurisdiction of other agencies, in particular the Coast Guard. The "rationale" for this mitigation measure already recognizes that a vessel may not have time to move to deeper water and indicating that the vessel and the Long Wharf should be protected "to the greatest extent feasible" (DEIR, p. 4.11-18). Yet the MM is stated unconditionally. Chevron requests that SLC either delete this MM or add the qualification "if the vessel operator determines that it is safe and feasible to do so" at the end of the sentence.

37-47

Comment 48: MM GEO-6

This MM calls for mooring and structural analysis which is already required in compliance with MOTEMS. Any significant changes needed at the Wharf will be reviewed with SLC. Accordingly, for the reasons stated in comment 6, Chevron asks SLC either to eliminate MM GEO-6 as redundant with MOTEMS requirements, or to clarify (either by revising the MM or in its response to this comment) that MM GEO-6 will be satisfied by compliance with MOTEMS requirements.

37-48

Comment 49: MM SOC-1

As noted in Comment 40 above, loss of business income is not an "environmental impact" under CEQA. Mitigation is required only to address physical environmental impacts, not financial impacts. Chevron will, of course, provide compensation as required under applicable law, such as compensation under the California Oil Spill Prevention and Response Act as identified in this MM, but that such compensation is not appropriately considered as mitigation for an impact under CEQA. Chevron asks SLC to delete MM SOC-1 as both inapplicable under CEQA and

37-49

redundant with the statutory requirements cited in the measure itself. However, if SLC declines to do so, Chevron agrees with the wording of the measure which references those requirements.

Comment 50: MM EJ-1

Chevron regularly donates to local food banks and is willing to do so to address any impacts of oil spill on fishing by minority and low income communities. However, this MM imposes vague and open-ended requirements. Chevron believes that MM EJ-1 is redundant with compensation requirements cited in MM SOC-1. However, if SLC declines to delete the MM, Chevron requests that “sport fishing activities” be changed to “subsistence fishing by members of minority and/or low income communities.” Impacts on “sports fishing activities” are not necessarily related to any impact on environmental justice communities. The impact analysis (DEIR, p. 4.13-9) refers only to subsistence fishing. By contrast, the MM itself could be read to require Chevron to provide food for individuals whose ethnicity and/or income levels do not raise concerns regarding environmental justice. (In addition, there is a typographical error in the MM: “effective areas” should be changed to “affected areas”.)

37-50

Thank you for considering our comments and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Giu". The signature is fluid and cursive, with the first name "John" and last name "Giu" clearly distinguishable.

## Response to Comment Set #37

### 37-1 Feasibility of Alternatives

Section 15126.6 (a) of the State CEQA Guidelines states, in part, “An EIR shall describe a range of reasonable alternatives to the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” Subsection (b) states, in part, “...the discussion of alternatives shall focus on alternatives to the project which are capable of avoiding or substantially lessening any significant impacts of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.”

All alternatives considered in the DEIR met the project objective of maintaining operational viability of the Refinery, while maintaining the feed stocks and refined products at current throughput levels, but without use of the Long Wharf facility. The information provided is acknowledged and would be made available to the Commission as part of the Final EIR for their consideration of the proposed new lease for the Long Wharf facility.

#### 37-1.1 Infeasibility of Full Throughput via Pipeline Alternative

The information provided is acknowledged and would be made available to the Commission as part of the Final EIR for the consideration of the proposed new lease for the Long Wharf facility.

#### 37-1.2 Infeasibility of Consolidated Terminal Alternative

The DEIR Section 3 discusses the alternatives in more detail, and page 3-9 presents the Consolidated Terminal Alternative and other assumptions, e.g., that the Consolidated Terminal would be located in Contra Costa County, but not necessarily at the previously proposed location. The DEIR Executive Summary, on ES-7, concludes that the Conceptual Consolidation Terminal would reduce operations at the Long Wharf, but not eliminate them. The combination of impacts associated with the Consolidation Terminal and with the land-based interconnecting pipelines would present a greater environmental impact than the proposed Project.

### 37-2 Feasibility of No Project Alternative

The CEQA requires a discussion of a “No Project Alternative”. Section 15126.6 (e) states, in part, “The specific alternative of “no project” shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision makers to compare

the impacts of approving the proposed project with the impacts of not approving the proposed project.” The No Project Alternative presented in the Draft EIR, while presuming the ultimate decommissioning of the Long Wharf facilities, would provide for ongoing operations until Chevron is able to establish other supply to and shipping from alternatives for the Refinery, e.g. the “Full Throughput via Pipeline Alternative”.

37-3 Impacts of No Project Alternative

Please refer to response 37-2 above.

37-4 Impacts of Project Alternatives

Section 15126.6 (d) of the State CEQA Guidelines provides, in part, “The EIR shall contain sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” The DEIR provides such information at a level comparable to the detail available for such alternatives. For example, probable impacts of pipeline construction are presented, but not in the amount of detail where the precise route of such pipeline is specifically known. The analyses, though general, discuss the types of environmental impacts that would most likely occur, given the general nature of each scenario.

37-5 Environmentally Superior Alternative

The CSLC looks at the No Project Alternative as a means to compare impacts at the site. The No Project Alternative, without operations and no impacts at the Long Wharf site, is environmentally superior. Accordingly, as required by CEQA section 15126.6 (e)(2), “If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.”

37-6 Approach to Mitigation

Comment 37-6 serves as a general comment and introduction to the Comments 37-7 through 37-50. Provided below are specific responses to each of those comments. DEIR Section 6, the Mitigation Monitoring Program, identifies other agencies that, in addition to the CSLC, will have responsibility for monitoring or implementing specific MMs.

37-7 MM OS-3a

During preparation of the Draft EIR, the CSLC’s Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) were in the process of development, public review and comment, and finalization. The MOTEMS were approved by the California Building Standards

Commission on January 19, 2005, and became effective on February 6, 2006. MOTEMS are codified as CCR Title 24, Part 2, Chapter 31F (Marine Oil Terminals). The standards apply to all existing and new

marine oil terminals in California, and include criteria for inspection, structural analysis and design, mooring and berthing, geotechnical considerations, fire, piping, mechanical and electrical systems. These regulations:

- Define minimum requirements for audit, inspection and evaluation of the structural, electrical and mechanical systems on a prescribed periodic basis, or following a significant damage-causing event;
- Provide criteria for structural loading, deformation and performance-based evaluation considering earthquake, wind, wave, current, seiche and tsunami effects;
- Provide requirements for the safe mooring and berthing of tank vessels and barges;
- Describe requirements for geotechnical hazards and foundation analyses, including consideration of slope stability and soil failure;
- Provide requirements for fire prevention, detection and suppression including appropriate water and foam volumes; and
- Provide requirements for piping, mechanical and electrical equipment.

The requirements of MOTEMS generally represent the best current practice of industry and meet the standards of the “best achievable protection of public health and safety and the environment” prescribed by Section 8755 of the Public Resources Code.

MOTEMS requires that:

- a. All Marine Oil Terminals (MOTs) must have an above-the-water engineering audit every 3 years.
- b. For high risk MOTs (as defined in the MOTEMS), the operator has 30 months (from February 6, 2006) to perform the first engineering “audit” which will be due August 2008. The audit requires an underwater inspection, thorough above water inspection and an extensive walk-through to verify compliance with MOTEMS including a seismic analysis, mooring analysis and other assessments. Pending future activities such as larger vessels, higher impact velocities, structural degradation, etc., the MOTEMS may require additional structural, mooring, pipeline or other analyses and updates to remain compliant.

Quick release devices are subject to MOTEMS section 3103F.10. Therefore, Mooring Hardware, specified in MM OS-3a is no longer necessary.

37-8 MM OS-3b

Within recent years, staff is aware of incidents in which ships have drifted along the sides of Berth #1 at the Long Wharf. As Chevron's comment states, some ships already have tension meters. However, for those that do not, MM OS-3b provides additional protection for operations at Berth #1. As discussed previously with Chevron, it is entirely within Chevron's control and performance as to whether the devices are subsequently necessary at other berths.

37-9 MM OS-3c

As MM OS-3c states, "Prior to implementing this measure, Chevron shall consult with the San Francisco Bar Pilots, the U.S. Coast Guard, and the CSLC staff to provide information that would allow the CSLC to determine... the most appropriate application and timing of an AAS at the Chevron Long Wharf." Chevron Comment 37-9 does not acknowledge the requirement for this discussion among the three agencies. MM OS-3c will remain as a potential requirement until consultation with the Bar Pilots, U.S. Coast Guard, and CSLC staff has been formally documented. Chevron may also consider, as an interim measure that would generate data useful in determining the need for an AAS, use of a low-cost, portable laser technology currently in service at other terminals.

37-10 MM OS-3d

Refer to response 37-7 regarding MOTEMs date of effectiveness. As MOTEMS requires a comprehensive maintenance program, MM OS-3d is no longer required.

37-11 MM OS-4

Thank you for your comment. However, no change is required in the language of MM OS-4.

37-12 MM OS-5

See response to Comment 37-10.

37-13 MM OS-6a

See response to Comment 37- 7.

37-14 MM OS-6b

Since the MOTEMs which is codified as 24 CCR, Part 2, Chapter 31F, requires a Fire Plan, MM OS-6b is no longer required.

37-15 MM OS-7a

Thank you for your comment. However, no change is required in the language of MM OS-7a.

37-16 MM OS-7b

MM OS-7b has been revised to clarify that Chevron shall respond to spills from vessels traveling to or from its wharf, vessels berthing at its wharf, or carrying cargo owned by Chevron.

(Note: Comment letter 37 did not include comment numbers 17 or 18, as such responses to comments skip these numbers.)

37-19 MM WQ-2

The first sentence of MM WQ-2 has been clarified with the following revision to indicate that it is prospective in its requirements:

“Following the adoption of the Mitigation Monitoring Program for the proposed Project, Chevron will advise both agents and representatives of shipping companies having control over or representing vessels that have informed Chevron of plans to call at the Long Wharf about the California Marine Invasive Species Act.”

37-20 MM WQ-7

The first sentence of MM WQ-7 has been clarified with the following revision to indicate that it is prospective in its requirements:

“Following the adoption of the Mitigation Monitoring Program for the proposed Project, Chevron will advise both agents and representatives of shipping companies having control over or representing vessels that have informed Chevron of plans to call at the Long Wharf about the requirements of the 2008 International Maritime Organization (IMO) prohibition of TBT applications to vessel hulls. ...”

37-21 MM WQ-8

Refer to response to Comment 37-22, below.

37-22 MM WQ-9

MM WQ-9 has been modified to reflect coordination with the RWQCB in preparation of a SWPPP specific to the Long Wharf, and that the SWPPP will consider BMPs suggested by the CSLC for inclusion. For example,

CSLC would request that the SWPPP include a description of the debris collection process, including the frequency, volume and weight of swept up material on an annual and seasonal basis, not provided earlier for the Project Description/ Water Quality Evaluation of this EIR.

37-23 MM WQ-11

See responses to Comments 37-2, 37-2 and 37-7 through 37-10 regarding MMs OS-3a through OS-3d and OS-4, above.

37-24 MM WQ-12

See responses to Comment 37-15 regarding to MMs OS-7a and OS-7b.

37-25 MM BIO-3a –c

Chambers Group has rechecked the dredging windows referenced in the DEIR and they are consistent with the LTMS Management Plan (2001), and the LTMS Environmental Work Windows (draft version 1.4, February 2004) both of which are available documents on the DMMO website.

37-26 MM BIO-4

See responses to Comment 37-19 for WQ-2 and Comment 37-20 for WQ-5 above.

37-27 MM BIO-6a

See responses to Comment 37-7 through 37-11 for MMs OS-3a through OS-3d, and MM OS-4 above.

37-28 MM BIO-6b

This requirement does not infringe upon other agency requirements, but provides the CSLC a level of assurance that Chevron can protect nearby sensitive resources at risk from an oil spill. As Chevron states in comment 37-28, "Chevron has sufficient equipment and resources in place to conduct an adequate initial response until other resources... arrive to assist in responding to an incident." MM BIO-6b requires that Chevron demonstrate such capability to the CSLC through drills. Chevron shall provide evidence to the CSLC that they have at least 15,000 feet of boom that can be deployed within 3 hours to protect the Richmond eelgrass beds and the Castro Rocks, simultaneously.

37-29 MM BIO-6c

It appears that Chevron has procedures in place to cover MM BIO-6c for flushing double-crested cormorants from oil contaminated waters. The MM has been modified to require that Chevron show proof of this capability, by submitting to the CSLC a copy of the agreement with the Oiled Wildlife Care Network, demonstrating that flushing of double-crested cormorants is covered.

37-30 MM BIO-6d

This requirement does not infringe upon other agency requirements, but provides a level of assurance to the CSLC that, in addition to other providers, Chevron also has the ability to protect nearby sensitive resources at risk from an oil spill. This capability would be necessary, in the event that MSRC is responding to another emergency(ies) and may not be available to rapidly respond.

37-31 MM BIO-6e

It appears that Chevron's comment 37-31 for MM BIO-6e, should be referring to MM BIO-6f. MM BIO-6f has been clarified as follows:

Chevron shall work with the Natural Resource Damage Assessment (NRDA) team, as the team may request, to work as a single team toward determination of the extent of damage and loss of resources, cleanup, restoration and compensation. Chevron shall keep the CSLC informed of their participation in such efforts, by providing copies of memos, meeting agendas, or other appropriate documentation, including e-mails.

37-32 MM BIO-6g

See response to comment 37-15 on MMs OS-7a and response to comment 37-16 for OS-7b above.

37-33 MM FSH-1

MM FSH-1 does not require Chevron to participate in the development of CDFG regulations as the comment states. MM FSH-1 does require Chevron to participate in Pacific herring annual public scoping and hearing processes for the purpose of keeping stakeholders up-to-date on regulations which will help to reduce or avoid potential conflicts between the Long Wharf and Pacific herring fishing operations. The resulting first hand knowledge will enable reduction or avoidance of environmental impacts, contrary to response to comment 37-33's assertion that

participation in the process would do nothing to reduce or avoid environmental impacts.

37-34 MM FSH-2

The VTS overlay over the S.F. Bay fishing areas reveals areas that are not covered by the VTS, especially areas close to shore. FSH-2 does not request Chevron to inform each vessel operator individually, but notify a source that would distribute information about potential space use conflicts to transiting vessels. This is not limited to the CDFG Director's Herring Advisory Committee, and allows Chevron to notify other sources to distribute information, thus giving Chevron options as long as those options will inform potential space use conflicts with the fishery.

See also response to Comment 37-33.

37-35 MM FSH-6a

See responses to Comment 37-19 for MMs WQ-2 and WQ-5 above.

37-36 MM FSH-6b

All future lease renewal considerations for marine oil terminals under the jurisdiction of the CSLC will also comply with MM FSH-6b, as such, it will not apply only to Chevron. As MM FSH-6b states, the level of funding will be determined through a cooperative effort with the CSLC involvement. As such, the CSLC has the option to begin this process with Chevron, and/or wait until other marine oil terminals will be required to comply with MM FSH-6b.

37-37 MM FSH-8

See response to Comment 37-25 for MM BIO-3 above.

37-38 MM FSH-9a

See responses to comments for MMs OS-3 through OS-7, BIO-6b and BIO-6d above.

37-39 MM FSH-9b

OSPR and the California Department of Health Services routinely post notices in marinas and harbors. MM FSH-9b provides an additional safety precaution requiring posting of notices in environmentally sensitive areas, and in multiple languages.

37-40 MM FSH-9c

As noted in the Mitigation Monitoring Table, Section 6 of the DEIR, this MM is to be coordinated with OSPR. MM FSH-9c highlights the CSLC's responsibility to coordinate with OSPR in this regard.

37-41 MM FSH-9d

All future lease renewal considerations for marine oil terminals under the jurisdiction of the CSLC will also comply with this MM, as such, it will not be specific to Chevron. As the MM states, the level of funding will be determined through a cooperative effort that includes the CSLC. As such, CSLC has the option to begin this process with Chevron, and/or wait until such time that other marine oil terminals will be required to comply with this MM.

(Note: a duplicate number 41 appears in the Chevron letter, as such, the responses follow the Chevron letter numbering.)

37-41 MM FSH-10

See response to comment 37-15 for MMs OS-7, response to comment 37-39 for FSH-9b and response to comment 37-41 for FSH-9d above.

37-42 MM LU-3

See responses to comments for MMs for OS, WQ, BIO and FSH.

37-43 MM LU-4

See responses to comment 37-15 for MM OS-7a and response to comment 37-16 for MM OS-7b.

37-44 MM N-1

MM N-1 provides the means to identify and document vessel noise levels upon Chevron's receipt of a public complaint and further provides that Chevron shall work with the vessel owner to the best of their ability to reduce or avoid noise issues. Additionally, it is noted that the first bullet of the MM gives Chevron the flexibility to berth vessels at the most distant berth that can accommodate the class of ship and cargo.

37-45 MM VR-2

See responses to comments on the MMS for OS and BIO above.

37-46 MM VR-3

See responses to comment 37-15 for MM OS-7a and response to comment 37-16 for MM OS-7b.

37-47 MM GEO-4

The following language has been added to the end of the MM to recognize the safety of the vessel and the crew. "... when the captain determines that it is safe and feasible to do so."

37-48 MM GEO-6

Refer to the discussion of MOTEMS in response 37-7. The text of Impact GEO-6 has been changed to reflect the MOTEMS requirement for changes to berths to accommodate larger vessels in the future at Berth #4. As such, since MOTEMS must be adhered to, the MM GEO-6 is no longer required.

37-49 MM SOC-1

The MM refers to requirements of OSPR, as such, the MM is no longer required.

37-50 MM EJ-1

The wording has been changed as follows: the reference to "sport fishing activities" is deleted, and the phrase is replaced by "subsistence fishing by members of minority and/or low income communities". This change accurately reflects the wording of the text that substantiates the MM.